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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/444,083 11/22/99 FLETCHER

A 11.712

EXAMINER

QM32/1002

THOMAS M GAGE  
PATENT DEPARTMENT  
KIMBERLY CLARK WORLDWIDE INC  
401 NORTH LAKE STREET  
NEENAH WI 54956

STEPHENS, J

ART UNIT

PAPER NUMBER

3761

DATE MAILED:

10/02/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/444,083

Applicant(s)

FLETCHER ET AL.

Examiner

Jacqueline F Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7,8, 11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

1. Regarding the 112 rejection of claims 1-23 and 29, the rejection is withdrawn.
2. Applicant's arguments with respect to the 102 and 103 rejections of claims 1-29 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1-7, 9-13, and 25-28 are rejected under 35 U.S.C. 102(a) as being anticipated by Kling WO 97/46197.

In reference to claims 1, 3, 4, and 25, Kling discloses an absorbent article **1** comprising an absorbent chassis with a longitudinal axis, a transverse axis, and front and back waist edges (**5** and **6**, respectively, Figure 1) parallel to the transverse axis. The invention of Kling includes opposite side edges **7** and **8** extending between the front and back waist edges, a front waist region **2** contiguous with the front waist edge, a back waist region **3** contiguous with the back waist edge, and a crotch region **4** which extends between and interconnects the front and back waist regions (Figure 1).

The front waist region defines a pair of transversely opposed nonwoven (page 13, lines 20-29) front side panels (**13** and **14**). A front center panel is positioned

Art Unit: 3761

between and interconnecting the front side panels. The back waist region defines a pair of transversely opposed nonwoven (page 13, lines 20-29) back side panels (**15** and **16**).

A back center panel is positioned between and interconnecting the back side panels.

At least one pair of side panels is elastomeric in a direction generally parallel to the transverse axis (page 13, lines 20-33). Because the side panels comprise elastomeric material **12**, the article comprises elastomeric components transversely disposed between the fastening components and the absorbent assembly.

The absorbent article comprises a bodyside liner **11**, an outer cover **9** bonded to the bodyside liner, and an absorbent assembly **10** disposed between the bodyside liner and the outer cover. The absorbent article includes a fastening system (Figure 1, elements **20-23**) for releasably securing the absorbent article in a pant-like configuration (Figure 3).

The fastening system comprises first and second fastening components **22** and **23** disposed on the back side panels abutting the back waist edge (Figure 1). The fastening components are adapted to releasably engage first and second mating components **20** and **21** on the front side panels. The transverse distance between the first and second fastening components is substantially equal to the transverse distance between the first and second mating fastening components.

In reference to claim 2, the side panels **13-16** form part of the waist end edges parallel to the transverse axis (Figure 1) and opposite leg end edges. The panels are elastomeric in a longitudinal direction (page 13, lines 20-33), which comprises the waist end edge to the leg end edge (page 13, lines 20-33).

Art Unit: 3761

Regarding claims 5 and 27, the article comprises leg elastic members aligned along each side of the crotch region having terminal points in the front and back side panels (page 13, lines 20-36).

In reference to claim 6, the side panels are about 20% or greater of the overall length dimension of the absorbent (Figure 1).

With regard to claim 7, the absorbent article of Kling has an inner surface and opposite outer surface. The fastening components comprise loop type fasteners and mating hook fastening components. The hook components can be positioned on the outer surface and the loop material can be located on the inner surface, which are inboard of the side of the rear waistband (page 15 line 10 through page 16, line 10).

With respect to claim 9, Kling discloses a pant configuration as claimed (Figure 7) where the refastenable seams cover 100% of the distance between the waist opening and leg openings which reads on the claimed range of about 90-98%.

Regarding claim 10, the first and second fastening components are disposed in the back waist region abutting the back waist edge and the first and second mating fastening components are disposed in the front waist region abutting the front waist edge (Figure 1).

In reference to claim 11, 12, and 13, the first and second fastening components and the mating fastening components have a length dimension parallel to the longitudinal axis, a width dimension, and a length-to-width ratio of about 5 or greater (Figure 1).

Art Unit: 3761

With regard to claims 26-28, Kling discloses a refastenable pant (Figures 3 and 7) as claimed having a pair of elastomeric, nonwoven front and back side panels **13-16**. The pant includes refastenable seams **20-23**, elastomeric leg members adjacent the side panels and encircling each leg opening, and elastomeric front and back waistbands (Figure 3 and page 13, lines 20-36).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 14-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kling.

Regarding claims 14, with respect to the limitations of the structure of the absorbent chassis, waist and crotch regions, side panels, and fastening system, the applicant is directed to the 102 rejection of claim 1 where these limitations are found. Kling discloses the present invention substantially as claimed. However, Kling fails to disclose the absorbent structure is a rectangular-shaped structure. It would have been an obvious matter of design choice to develop the Kling invention as a rectangular composite as opposed to an hour-glass shaped composite, since applicant has not disclosed that the rectangular structure solves any stated problem and rectangular, hour-glass and dog-bone shaped structures are well known in the art as shapes for absorbent articles.

Regarding claim 15, the first and second fastening components are disposed in the back waist region abutting the back waist edge and the first and second mating fastening components are disposed in the front waist region abutting the front waist edge (Figure 1).

In reference to claim 16, the side panels 13-16 form part of the waist end edges parallel to the transverse axis (Figure 1) and opposite leg end edges. The panels are elastomeric in a longitudinal direction (page 13, lines 20-33), which comprises the waist end edge to the leg end edge (page 13, lines 20-33).

In reference to claim 17, the front side panels of diaper are longitudinally spaced from the back side panels (Figure 1).

In reference to claim 18, the side panels are about 20% or greater of the overall length dimension of the absorbent (Figure 1).

With respect to claim 20, Kling discloses a pant configuration as claimed (Figure 7) where the refastenable seams cover 100% of the distance between the waist opening and leg openings which reads on the claimed range of about 90-98%.

8. Claims 8, 19, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kling in view of Cooper (USPN 5087253). Kling as applied to claims 1 and 14 above, discloses the present invention substantially as claimed. However, Kling fails to disclose the loop fasteners are larger than the hook fasteners. Cooper discloses a diaper/training pant absorbent article comprises hook and loop fasteners wherein the loop fasteners are larger than the hook fasteners (Figures 8 and 9). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the hook and loop fasteners of Kling with the hook and loop fasteners of Cooper. Doing so would provide a loop fastener that easily allows the hooks to be engaged with the loops.

With regard to claim 19, the absorbent article of Kling has an inner surface and opposite outer surface. The fastening components comprise loop type fasteners and mating hook fastening components. The hook components can be positioned on the outer surface and the loop material can be located on the inner surface, which are inboard of the side of the rear waistband (page 15 line 10 through page 16, line 10).

Regarding claim 29, the applicant is directed to the 103 rejections of claims 14-20 where the limitations of the absorbent chassis, waist regions, side panels, and fasteners are found. Kling discloses the present invention substantially as claimed. However, Kling fails to disclose an outer cover graphic is disposed on the article.



Art Unit: 3761

Cooper discloses a training pant with an outer cover graphic. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Kling to incorporate an outer cover graphic. Doing so would provide a means for personalizing or decorating the training pant for aesthetic purposes.

9. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kling in view of Tanzer et al. (USPN 5782819).

In reference to claim 21, Kling discloses the present invention substantially as claimed. However, Kling fails to disclose the article further comprises support members extending from the side panels. Tanzer discloses an absorbent article comprising support members extending from the side panels of the article (Figure 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the side panels of Kling with support members to enable the article to conform to the wearer.

Regarding claims 22-24, Kling/Tanzer disclose the support members are bonded and extend transversely outward from the side panels, and mating fasteners are disposed on the support members ('819 Figure 1). The first and second fastening components or the mating fastening components may alternately be attached to tab fastener 44 edge ('819 col. 12:10-14).

Art Unit: 3761

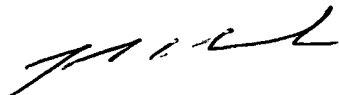
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703)308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703)308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

Jacqueline F Stephens  
Examiner  
Art Unit 3761

September 26, 2001



John G. Weiss  
Supervisory Patent Examiner  
Group 3700